

REMARKS:

Claims 1-20 are pending.

The Examiner rejected claims 1-20 for nonstatutory double patenting. In response, the applicant is providing herewith an executed terminal disclaimer and fee in compliance with 37 CFR 1.321(c). Accordingly, the rejection is believed to have been obviated.

The Examiner also rejected claims 1-6 and 7-20 under 35 U.S.C. 103(a) as being unpatentable over Lekhman et al. (U.S. Patent No. 4,492,374) alone or in view of Mason et al. (U.S. Patent No. 5,112,045), respectively. The applicant respectfully traverses.

The Lekhman patent teaches a "spring shoe" having "foot receiving members" (col. 1, lines 41-42) that are worn on the feet of a user (col. 2, lines 5-9) and are especially adapted for jogging or running (col. 4, lines 4-7). However, all claims of the present invention recite "a seated user" "treading [a] limb upon the top surface" of a "three-dimensional platform" "such that cycles of compression and restitution are achieved." The applicant respectfully submits that a seated user of Lekhman's spring shoes would not reasonably have the ability to tread her foot upon the spring, but, instead, would have to lift and drop the entire shoe to put any force on the spring member. Also, a seated user would find it very difficult, if not impossible, to achieve cycles of compression and restitution through treading a foot (as opposed to standing and putting the user's weight upon the spring).

Moreover, while the Lekhtman patent teaches a "spring shoe," the Mason patent teaches a platform supported by a bladder and upon which a patient balances or performs other exercises

and works against the instability of the platform. Thus, the purpose of the bladder in Mason's patent is to be "an adjustable stability member." However, no mention is made by Mason of the use of a filled bladder for providing resistance to a pushing force applied by the user. Indeed, Mason refers only to the adjustment of pressure in a bladder as a means for adjusting stability, which is a totally different concept from resistance. See Declaration of Williams, ¶ 5.

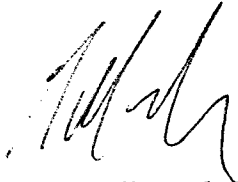
Hence, the disclosure by Mason is limited to the bladder being used as an adjustable stability member. An adjustable stability member would not be used as a substitute for the resistance-bearing spring of Lekhtman's shoe invention, given the wholly different purposes and requirements of a resistance-bearing spring and a platform-stabilizing bladder. See Declaration of Williams, ¶ 6.

Furthermore, even if one were motivated to combine the cited references, the combination of Lekhtman and Mason does not result in all elements of the claims. This is because nothing in Lekhtman or Mason (alone or combined with the knowledge available to one of ordinary skill in the art at the time the invention was made) teaches or suggests the recited ranges of relative energy return found in all claims of the invention. This range is critical because, as disclosed in the specification, it was objectively determined by users through empirical testing, which was overseen by a Ph.D. professor of mechanical engineering, to provide the best combination of resistance and restitution energy to the feet and legs in response to the claimed treading method. See Declaration of Williams, ¶ 7.

In view of the above, reconsideration by the Examiner is respectfully requested. Other than the terminal disclaimer fee provided herewith, no fee is believed to be required. However, should

there be any unforeseen costs associated with this Request, please charge them to our Deposit
Account No. 17-0055.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gavin J. Milczarek-Desai', written in a cursive style.

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